

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

EDDIE GAMBLE,)	
)	
Petitioner,)	
)	
v.)	1:11CV1018
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

On January 9, 2012, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. Petitioner Eddie Gamble filed Objections [Doc. #5] to the assignment of the Magistrate Judge, but not to the Magistrate Judge's Recommendation within the time limit prescribed by Section 636.

The Court has reviewed the United States Magistrate Judge's Recommendation [Doc. #3], which is affirmed and adopted.

The Court notes that Petitioner has also filed a Motion [Doc. #6] requesting appointment of counsel. In considering Petitioner's request for appointment of counsel, the Court notes first that there is no constitutional right to appointed counsel in a habeas case. See Pennsylvania v. Finley, 481 U.S. 551, 555 (1987) (holding that "the right to appointed counsel extends to the first appeal of right, and no further"). Under 28 U.S.C. § 2241 and 18 U.S.C. § 3006A, the Court, in its discretion, may

appoint counsel if it “determines that the interests of justice so require.” 18 U.S.C. § 3006A(a)(2). However, having reviewed Petitioner’s request for counsel and the record in this matter, the Court does not find that appointment of counsel is required by the interests of justice or otherwise. Therefore, Petitioner’s request for counsel will be denied.

In addition, the Court notes that Petitioner has submitted another Application [Doc. #7] to proceed *in forma pauperis*. However, Petitioner has not attempted to satisfy the requirements set out in the Recommendation filed January 9, 2012. Specifically, Petitioner has not attempted to show that 28 U.S.C. § 2255 was inadequate or ineffective to test the legality of his detention. Therefore, the Application to proceed in forma pauperis will be denied without prejudice to Petitioner filing a new action as set out in the January 9, 2012 Recommendation.

IT IS THEREFORE ORDERED that Petitioner’s “ReNew Motion for Appoint of Counsel” [Doc. #6] and Petitioner’s Application [Doc. #7] to proceed *in forma pauperis* are DENIED.

IT IS FURTHER ORDERED that this action is dismissed sua sponte without prejudice to Petitioner filing a new action on a 28 U.S.C. § 2241 petition, accompanied by the five dollar filing fee or an application to proceed in forma pauperis if he can meet the tests set out in the Recommendation.

IT IS FURTHER ORDERED that, finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is DENIED.

This the 24th day of May, 2012

/s/ N. Carlton Tilley, Jr.
Senior United States District Judge